

KEVIN T. CONWAY, ESQ.
ATTORNEY AT LAW
LICENSED IN
N.Y., N.J., CT.

664 Chestnut Ridge Road
Spring Valley, NY 10977
Tel: (845) 352-0206
Fax: (845) 352-0481

65 Route 4 East
River Edge, New Jersey 07661
Tel: (201) 525-1099

June 12, 2018

The Honorable Judge Lorna G. Schofield
Thurgood Marshall United States Courthouse
Courtroom 1106
40 Foley Square
New York, NY 10007

Re: 1:17-cv-09145-LGS – Malibu Media LLC vs. JOHN DOE subscriber assigned IP address 67.245.149.227; Reply to Order to Show Cause

Dear Judge Schofield:

I represent Plaintiff, Malibu Media, LLC, in the above-referenced matter. Please allow this letter to serve as Plaintiff's Reply to the Order to Show Cause dated June 6, 2018 [CM/ECF 20].

Plaintiff replies to the Court's Order directing Plaintiff to show cause why this case should not be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) and states as follows:

Plaintiff commenced this action against the internet subscriber assigned IP address 67.245.149.227 on November 22, 2017 at which time it filed a complaint alleging that Defendant copied and distributed one or more of Plaintiff's copyrighted works, all without Plaintiff's consent [CM/ECF 1]. Plaintiff asserted a claim for direct copyright infringement, and requested that Defendant delete and permanently remove, and be enjoined from continuing to infringe, Plaintiff's copyrighted works. *Id.* On December 11, 2017, Plaintiff was granted leave to serve a third-party subpoena on Defendant's ISP, Charter Communications, to obtain the Defendant's identifying information [CM/ECF 15]. Plaintiff received the ISP's response on March 16, 2018. Upon receipt of the subscriber's identifying information, Plaintiff conducted a thorough investigation and determined that the subscriber was indeed the infringer. Plaintiff has prepared an Amended Complaint to name the Defendant.

Pursuant to the Court's Order granting leave to serve the third-party subpoena, the defendant may proceed anonymously through discovery [CM/ECF 15]. Thus, in order to protect the Defendant's identity, Plaintiff filed a Motion to File the Summons and Amended Complaint Under Seal and Limited Protective Order [CM/ECF 19] on May 30, 2018 and was waiting for the Court's order on the same in order to file its unredacted amended complaint and summons under

seal and effectuate service of process. In addition, while responding to the instant Order to Show Cause, Plaintiff has reviewed your Honor's procedures wherein it indicates that the request to file under seal should be sent via an e-mail to Chambers. In the event this was the cause of the delay, Plaintiff is contemporaneously sending its Request to File Under Seal via e-mail to Chambers. As soon as leave is granted, Plaintiff will file its Unredacted Amended Complaint under seal, request a summons and attempt to serve the Defendant.

Therefore, Plaintiff respectfully requests that the Court not dismiss the instant action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

Respectfully Submitted,

By: /s/ Kevin T. Conway
Kevin T. Conway, Esq. (KC-3347)
664 Chestnut Ridge Road
Spring Valley, New York 10977-6201
T: 845-352-0206
F: 845-352-0481
E-mail: ktcmalibu@gmail.com
Attorneys for Plaintiff